

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Robert Ehrenspeck, Ronald Kilbride, Joseph Digiso, and Joseph Sangiorgio, (Claimants) vs. Dean Petkanas, Briarwood Investment Counsel, Frank Fackovec, Michael Kooyman, Thomas Mangione, Wintrade, Inc., and Roy Bouchier, (Respondents)

Case Number: 01-00374

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimants Robert Ehrenspeck ("Ehrenspeck"), Ronald Kilbride ("Kilbride"), Joseph Digiso ("Digiso"), and Joseph Sangiorgio ("Sangiorgio"), hereinafter collectively referred to as "Claimants": Kevin B. Conway, Esq., Conway & Conway, New York, NY.

Respondents Dean Petkanas ("Petkanas") and Briarwood Investment Counsel ("Briarwood"): Adolph D. Seltzer, Esq., a sole practitioner, New York, NY.

Respondent, Frank Fackovec ("Fackovec"): Michael Kalmus, Esq., Kalmus & Martuscello, New York, NY.

Respondents, Michael Kooyman ("Kooyman"), Thomas Mangione ("Mangione"), and Wintrade, Inc. ("Wintrade"): Dan McLoughlin, Esq., Sidley Austin Brown & Wood (formerly Sidley & Austin), New York, NY.

Respondent Roy Bouchier ("Bouchier"), did not enter an appearance in this matter.

CASE INFORMATION

Statement of Claim filed on or about: January 23, 2001.

Ehrenspeck signed the Uniform Submission Agreement: January 16, 2001.

Kilbride signed the Uniform Submission Agreement: January 4, 2001.

Digiso signed the Uniform Submission Agreement: January 4, 2001.

Sangiorgio signed the Uniform Submission Agreement: January 4, 2001.

Joint Statement of Answer filed by Petkanas and Briarwood on or about: March 26, 2001.

Petkanas signed the Uniform Submission Agreement: March 26, 2001.

Briarwood signed the Uniform Submission Agreement: March 26, 2001.

Fackovec did not file a Statement of Answer or sign a Uniform Submission Agreement.

Kooyman did not file a Statement of Answer or sign a Uniform Submission Agreement.

Mangione did not file a Statement of Answer or sign a Uniform Submission Agreement.

Wintrade did not file a Statement of Answer or sign a Uniform Submission Agreement.

Bouchier did not file a Statement of Answer or sign a Uniform Submission Agreement.

CASE SUMMARY

Claimants asserted the following causes of action: failure to pay arbitration award; violation of NASD rules; misstatements on Uniform Application for Broker-Dealer Registration; fraud; breach of contract; breach of fiduciary duty; and negligence. Claimants' claim involved unspecified financial products.

Unless specifically admitted in their Answer, Petkanas and Briarwood denied the allegations made in the Statement of Claim and asserted the following defenses: all of the causes of action alleged in the Statement of Claim do not set forth a legal cause of action against Respondents; the alleged claim that Briarwood and Petkanas did not accurately disclose the Ehrenspeck arbitration as a civil suit in the Uniform Application for Broker-Dealer Registration does not create a cause of action in favor of Claimants against Respondents; Petkanas is not personally liable for the payment of the judgment entered against Briarwood; and to the extent Claimants have alleged fraud against Briarwood and Petkanas, Claimants have failed to set forth specific facts which make up the elements of an action for fraud.

RELIEF REQUESTED

Claimants requested:

- a. Payment to Ehrenspeck in the amount of \$52,868.47, plus interest at a rate of 9% per annum accruing from January 4, 2001 until the date the Award is fully paid;
- b. Payment to Kilbride in the amount of \$18,010.80, plus interest at a rate of 9% per annum accruing from January 4, 2001 until the date the Award is fully paid;
- c. Payment to Digiso in the amount of \$17,121.17, plus interest at a rate of 9% per annum accruing from January 4, 2001 until the date the Award is fully paid;
- d. Payment to Sangiorgio in the amount of \$9,954.97, plus interest at a rate of 9% per annum accruing from January 4, 2001 until the date the Award is fully paid;
- e. Payment to each of the Claimants in the amount of \$64.03, plus interest at a rate of 9% per annum accruing from January 4, 2001 until the date the Award is fully paid as their part of the non-refundable NASD filing fee;
- f. Payment to each of the Claimants in the amount of \$126.25, plus interest at a rate of 9% per annum accruing from January 4, 2001 until the date the Award

is fully paid as their part of the total costs and disbursements as taxed by the County Clerk's office in New York;

- g. Pre and post-judgment interest on the compensatory damages;
- h. Costs of this action, including costs and expenses of expert witnesses;
- i. Reasonable attorneys' fees;
- j. Punitive damages in the sound discretion of the Panel; and
- k. Such other relief as the Panel finds appropriate under the circumstances.

Petkanas and Briarwood requested that:

- a. All claims for monetary damages against them be denied in their entirety;
- b. All costs of the arbitration be assessed against Claimants; and
- c. All other just and equitable relief be awarded to them.

OTHER ISSUES CONSIDERED AND DECIDED

By letter dated July 3, 2002, Claimants advised NASD Dispute Resolution that they settled all claims against Respondents Fackovec, Kooyman, and Mangione.

Respondent Wintrade filed for bankruptcy protection under Chapter 7 of the Bankruptcy Code on or about May 21, 2001. Accordingly, all claims against Wintrade were stayed.

Upon review of the file and the representations made on behalf of the Claimants, the undersigned arbitrators (the "Panel") determined that Bouchier has been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without Bouchier present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Bouchier, Fackovec, Kooyman, and Mangione did not file with NASD Dispute Resolution a properly executed submission to arbitration but are required to submit to arbitration pursuant to the Code and are bound by the determination of the Panel on all issues submitted.

During the hearings in this matter, Petkanas and Briarwood made a Motion to Dismiss. After due deliberation, the Panel denied the Motion.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are hereby dismissed in their entirety.
2. All other requests for relief are hereby denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:
Initial claim filing fee = \$ 225.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. In this matter, Briarwood Investment Counsel is a party.

Member surcharge	= \$1,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$1,500.00

Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with Panel x \$750.00	= \$1,500.00
Pre-hearing conferences: November 9, 2001	1 session
December 9, 2002	1 session
One (1) Hearing session x \$750.00	= \$ 750.00
Hearing Date: April 2, 2003	1 session
Total Forum Fees	= \$2,250.00

1. The Panel has assessed \$1,125.00 of the forum fees jointly and severally against

Claimants.

2. The Panel has assessed \$1,125.00 of the forum fees against Petkanas.

Fee Summary

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 225.00
<u>Forum Fees</u>	<u>= \$1,125.00</u>
Total Fees	= \$1,350.00
<u>Less payments</u>	<u>= \$ 975.00</u>
Balance Due NASD Dispute Resolution	= \$ 375.00

2. Briarwood is solely liable for:

<u>Member Fees</u>	<u>= \$3,100.00</u>
Total Fees	= \$3,100.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$3,100.00

3. Petkanas is solely liable for:

<u>Forum Fees</u>	<u>= \$1,125.00</u>
Total Fees	= \$1,125.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$1,125.00

All balances are payable to NASD Dispute Resolution, and are due upon receipt pursuant to Rule 10330(g) of the Code.

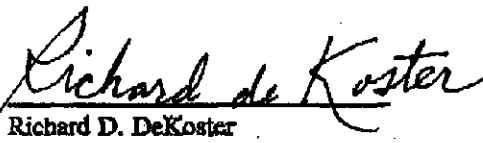
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ARBITRATION PANEL

Richard D. DeKoster	-	Public Arbitrator, Presiding Chair
Alice J.P. Lee-Getman	-	Public Arbitrator
Andrew J. Schoen, Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.


Richard D. DeKoster
Public Arbitrator, Presiding Chair

May 7, 2003
Signature Date

Alice J.P. Lee-Getman
Public Arbitrator

Signature Date

Andrew J. Schoen, Esq.
Non-Public Arbitrator

Signature Date

May 13, 2003
Date of Service (For NASD Dispute Resolution use only)

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ARBITRATION PANEL

Richard D. DeKoster -
Alice J.P. Lee-Getman -
Andrew J. Schoen, Esq. -

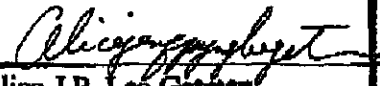
Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

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Richard D. DeKoster
Public Arbitrator, Presiding Chair

Signature Date


Alice J.P. Lee-Getman
Public Arbitrator

5/07/03
Signature Date

Andrew J. Schoen, Esq.
Non-Public Arbitrator

Signature Date

May 13, 2003
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Richard D. DeKoster	-	Public Arbitrator, Presiding Chair
Alice J.P. Lee-Getman	-	Public Arbitrator
Andrew J. Schoen, Esq.	-	Non-Public Arbitrator

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Richard D. DeKoster
Public Arbitrator, Presiding Chair

Signature Date

Alice J.P. Lee-Getman
Public Arbitrator

Signature Date



Andrew J. Schoen, Esq.
Non-Public Arbitrator

05/07/03

Signature Date

May 13, 2003

Date of Service (For NASD Dispute Resolution use only)